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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,700	01/05/2004	Christopher M. Osborne	1449/9	2892
25297	7590	10/25/2005	EXAMINER	
JENKINS, WILSON & TAYLOR, P. A. 3100 TOWER BLVD SUITE 1400 DURHAM, NC 27707			KOVACS, ARPAD F	
			ART UNIT	PAPER NUMBER
			3671	

DATE MAILED: 10/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/751,700	Applicant(s) OSBORNE, CHRISTOPHER M.	
	Examiner Árpád Fábián Kovács	Art Unit 3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim(s) 1-22 is/are rejected under 35 U.S.C. 102(b) as being anticipated by Mallaney et al (4726178).

Mallaney discloses:

cl. 1, 9, 17:

a movable chute apparatus comprising:

a chute flap (44) attached to a housing of a mowing machine (fig 9), the chute flap is capable of being moved in an open / closed position (via pivot point 46) & thus provide a discharge chute (through opening 24);

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a retaining flap (spring's longitudinal biasing/spring members 48) moveably attached to the housing (left extending member of the spring 48);

the functional features are also met, since the right extension member 48 moves from horizontal to at least generally vertical position (fig 12), & movable independently from the flap, since the flap & extension member(s) is not the same element, i.e. separate;

cl. 2, 10:

the chute flap pivotally attached at about ref 46;

cl. 3, 11:

the chute flap is biased toward either closed or open position (biased to closed position, col. 3, ln 22-23);

cl. 4, 12:

as shown in fig 4, the chute flap comprises a flange & wall portions;

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cl. 5, 13:

as best shown in fig 3, the retaining flap is pivotally attached to the housing (about the horizontal shaft, not numbered);

cl. 6, 14:

the retaining flap biased toward its retaining position (i.e. retains the chute flap as shown in fig 10);

cl. 7, 15:

first & second sections (left & right extension biasing members), the second (right) section capable of performing the function claimed, i.e. capable of securing the chute flap in its closed position;

cl. 8, 16:

the chute flap & the retaining flap are both rotatable about different axes (see the two parallel axes in fig 5 & 6;

cl. 17 (cont...):

the first & second sections are at least generally perpendicular to each other (see the at least generally perpendicular position in fig 12);

cl. 22:

the chute flap and the retaining flap are rotatable about substantially perpendicular axes (as shown in fig 5 & 6 both flaps are substantially perpendicular to 5-5 cross section).

3. As applied to claim(s) 18-21, in view of the structure disclosed/taught by Mallaney (4726178), the method of operating/using the device is inherent since it is the normal and logical manner in which the device is used.

Response to Arguments

4. Applicant's arguments with respect to claims 1-22 have been considered but are moot in view of the new ground(s) of rejection.

It is noted that in the rejection on 7/22/2004 has a different interpretation over Mallaney.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Árpád Fábián Kovács whose telephone number is 571 272 6990. The examiner can normally be reached on Mo-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571 272 6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Árpád Fábián Kovács
Primary Examiner
Art Unit 3671

ÁFK